

E-FILED on 2-17-2006

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SUSANNE M. PALMER,

Plaintiff,

v.

I.C. SYSTEM, INC.; B. BROWN., and DOES
1 through 20,

Defendants.

No. C-04-03237 RMW

ORDER GRANTING DEFENDANT I.C.
SYSTEMS, INC.'S MOTION FOR
RECONSIDERATION; GRANTING
PLAINTIFF'S MOTION FOR LEAVE TO
FILE AMENDED COMPLAINT; SETTING
CASE MANAGEMENT CONFERENCE

[Re Docket Nos. 124, 130, 132, 134, 137]

Defendant I.C. Systems moves for reconsideration of the portion of this court's November 8, 2005 order which granted plaintiff Susanne Palmer summary judgment that I.C. Systems failed to report a debt as disputed, in violation of 15 U.S.C. § 1692e(8). Palmer moves for leave to file an amended complaint. For the reasons given below, the court grants both motions.

I. MOTION FOR RECONSIDERATION

I.C. Systems moves for reconsideration of this court's November 8, 2005 order, claiming that (1) this court erroneously determined that Palmer's complaint could be read to allege a claim for failing to report a debt as disputed, in violation of 15 U.S.C. § 1692e(8), (2) the evidence submitted was insufficient to grant Palmer summary judgment on her claim for failing to report a debt as

1 disputed, and (3) I.C. Systems should be granted leave to present a defense under 15 U.S.C.
 2 § 1692k(c). The court agrees with I.C. Systems that the evidence relied up by the court in granting
 3 summary judgment—a portion of the deposition of an I.C. Systems employee—was not sufficient
 4 evidence upon which to grant Palmer summary judgment. The section of this court's November 8,
 5 2005 order granting Palmer summary judgment on her claim under 15 U.S.C. § 1692e(8) is therefore
 6 vacated. The court will not address I.C. System's other two alleged grounds for reconsideration of
 7 the order, as they are rendered moot by the plaintiff's filing of an amended complaint.¹

8 **II. MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

9 On January 13, 2006, Palmer filed a motion for leave to file an amended complaint. The
 10 hearing on this motion was set for February 17, 2006, making I.C. System's opposition due three
 11 weeks before, on January 27, 2006. *See* Civil L.R. 7-3(a). Without any explanation, and in spite of
 12 this court's recent warning that "further tardy filings may not be considered by the court," I.C.
 13 Systems did not file its opposition to Palmer's motion for leave until late on January 29, 2006. The
 14 court feels its reminder to file briefs on time has been ignored; therefore, I.C. System's untimely
 15 opposition will not be considered. However, even if the opposition were considered, the result
 16 would be the same.

17 Federal Rule of Civil Procedure 15(a) requires leave of court to amend a complaint except at
 18 the very early stages of litigation. Leave, though, is to "be freely given when justice so requires,"
 19 Fed.R.Civ.P. 15(a), and it is generally not appropriate to deny leave "unless it is clear . . . that the
 20 complaint could not be saved by amendment." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d
 21 1048, 1052 (9th Cir. 2003).

22 Palmer can satisfy this low burden. Her discovery has purportedly revealed new causes of
 23 action under the Fair Debt Collection Practices Act. The proposed amended complaint she has
 24 submitted is not obviously futile. Palmer is therefore granted leave to file her amended complaint.

27 ¹ Furthermore, I.C. Systems is now clearly on notice that Palmer may be alleging a
 28 claim for failing to report a debt as disputed in violation of 15 U.S.C. § 1692e(8).

III. ORDER

For the foregoing reasons, the court

1. grants I.C. System's motion for reconsideration and vacates the portion of this court's November 8, 2005 order granting Palmer summary judgment on her claim under 15 U.S.C. § 1692e(8); and
2. grants Palmer's motion for leave to file her amended complaint.

A case management conference shall be held on May 19, 2006 at 10:30 a.m. in Courtroom 6. The parties shall file a joint case management conference statement no later than May 12, 2006.

DATED: 2/17/06

/s/ Ronald M. Whyte
RONALD M. WHYTE
United States District Judge

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11 Counsel are responsible for distributing copies of this document to co-counsel that have not registered for e-filing under the court's CM/ECF program.

15 **Dated:** 2-17-2006 /s/ JH
Chambers of Judge Whyte